UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

In re: JOHN COLEMAN, Debtor	:	CIVIL NO. 1:03CV111

RULING ON MOTION FOR LEAVE TO APPEAL
(Paper 1)

The movant, John Coleman, seeks leave to file an interlocutory appeal from the Bankruptcy Court's Memorandum of Decision filed March 20, 2003. In that ruling, Judge Brown found that the First National Bank of Orwell did not violate the automatic stay provision of the Bankruptcy Code when it repossessed his truck. See generally Memorandum of Decision (Paper 3).

In relevant part, 28 U.S.C. § 158(a) authorizes the District Court to hear appeals from final judgments and, with leave of the Court, from interlocutory orders of the Bankruptcy Court. In ruling on motions for leave to appeal from an interlocutory order of the Bankruptcy Court, courts apply the standard set forth in 28 U.S.C. § 1292(b), which governs interlocutory appeals from district courts to circuit courts. See, e.g., In re Kelton Motors, Inc., 127 B.R. 548, 550 (D. Vt. 1991).

Under § 1292(b), an interlocutory decision is not appealable unless "such order involves a controlling question

of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation . . . ." The Second Circuit has instructed that the "use of this certification procedure should be strictly limited because only exceptional circumstances [will] justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." In re Flor, 79 F.3d 281, 284 (2d Cir. 1996)(citations and quotations omitted).

The movant has failed to demonstrate that an interlocutory appeal is appropriate. Even if the movant were to succeed on appeal, it would not advance the ultimate termination of the bankruptcy proceeding.

Furthermore, the movant has not identified a "controlling issue of law" meriting interlocutory review. The Bankruptcy Court determined that a creditor may repossesses a car prior to the date a debtor has filed for bankruptcy protection. See Paper 3 at 3. Considering that the bankruptcy stay is not effective until commencement of the case, that conclusion would seem unassailable. See 11 U.S.C. § 362(a); 3 King, Collier on Bankruptcy § 362.02 (15th ed. 2003)("The stay is effective automatically and immediately upon the filing of a bankruptcy petition. . . .").

The Motion for Leave to File an Interlocutory Appeal is DENIED.

SO ORDERED.

Dated at Brattleboro, Vermont, this _____ day of June, 2003.

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J. Garvan Murtha
United States District Judge